

MINUTES

ARKANSAS LOTTERY COMMISSION

Monday, June 1, 2009

2:30 p.m.

**University of Arkansas System's Board Room
Little Rock, Arkansas**

The Arkansas Lottery Commission met June 1, 2009, at 2:30 p.m., in the University of Arkansas System's Board Room in Little Rock, Arkansas. Arkansas Lottery Commissioners present were: Ray Thornton, Chairman; Dianne Lamberth, Vice Chair; Derrick Smith, Secretary/Treasurer; George Hammons; Susan Jones (via teleconference); Mike Malone; Ben Pickard; Patty Shipp and Joe White. Also attending were Representatives Barry Hyde, Allen Maxwell and Ray Kidd. Bureau of Legislative Research (BLR) staff: Laura Gilson, and Jill Thayer, Attorneys; Nell Smith, Research Analyst; Estella Smith, Legislative Analyst; Kendra Drone, Secretary; and Patrick Ralston.

Chairman Thornton called the meeting to order. Chairman Thornton noted Commissioner Jones's presence via teleconference. Chairman Thornton commended the BLR Staff for their efforts and noted that Ms. Laura Gilson deserved a lot of credit for her work.

Approval of Minutes

A motion was made by Commissioner Lamberth, and seconded by Commissioner White, to approve the minutes of the May 14, 15 and 20, 2009, meetings. The motion was approved by the Commission. A motion was made by Commissioner White, and seconded by Commissioner Lamberth, to approve the minutes of the May 27 meeting.

Committee Reports:

Legal Committee (Attachment 1)

Commissioner Smith reported on the meeting of the Legal Committee, which met today at 12:30 p.m. Committee members present were Commissioners Hammons, Shipp, and Smith. Commissioner Malone was also in attendance. Also attending were: Bishop Woosley, Assistant District Attorney, Attorney General's (AG's) office, BLR staff: Laura Gilson, Jillian Thayer, Estella Smith and Kendra Drone.

The Legal Committee discussed draft rules of practice and procedure based on model rules. Arkansas law requires that the Commission adopt rules of practice and procedure. The AG's office has promulgated model rules of practice and procedure. Commissioner Smith stated that, based on the model rules, some final corrections had to be made. He noted that the Legal Committee plans to meet again and present a final draft to the Commission at the next meeting or the meeting immediately thereafter to begin a full fledged rule-making proceeding. After the discussion of the rules of practice and procedure, the Committee discussed hiring a start-up counsel. The Commission discussed whether they would have to immediately enact major procurement rules under the lottery act that requires the Commission to adopt procurement rules for major procurement contracts. Commissioner Smith stated that there were two options 1) The Commission can draft procurement rules approved by the Commission or 2) The Commission can adopt the procurement rules currently used by the Arkansas Department of Finance and Administration (DFA).

Commissioner Smith stated that, given the time period that the Commission has talked about, the Legal Committee feels comfortable in adopting the procurement rules used by DFA and incorporating them by reference. The ultimate question is whether the Commission does this by statement or if they have to engage in a full fledged rule-making process requiring that a notice be given and a public comment period.

The Legal Committee is getting advice from Counsel and if it is determined that the Commission has to engage in that process, the Committee would ask the Commission to call an emergency meeting to begin the process. Chairman Thornton stated that he would await Commissioner Smith's advice concerning the aforementioned statement. Commissioner Shipp thanked Commissioner Smith for his time and work.

Retail Committee

Commissioner Lamberth reported on the Retail Committee meeting held Wednesday, May 27, 2009 at 3:15 p.m. The Retail Committee discussed the following: retailer provisions of the bill; securing criteria, policies and best practices from other states; requesting the Arkansas State Police to address either the Committee or full Commission on processing the applications of prospective retailers so as to ascertain how much lead time is required for retailers to be able to sell tickets; policies focusing on inclusion, not exclusion; focus on rudimentary policies and procedures; and the need to make overtures to several large businesses as possible retailers. The BLR staff provided the Committee with a listing of national chains with a presence in Arkansas that sell lottery tickets, multi-state business that do not sell lottery tickets, and also national and multi-state gas stations/convenience stores. The BLR staff was requested to contact NASPL for information on other states. Commissioner Lamberth stated that she was just handed information from the website containing names of businesses that had submitted information about becoming lottery retailers (Handout #1). She added that the Commission had a summary of information on lottery submissions listing 12 cities and 12 counties and noted that the Commission might look to review those that were interested in applications as they become available (Attachment #1). Chairman Thornton thanked Commissioner Lamberth for the report.

Director Search

Chairman Thornton stated that he was surprised that there were only 55 applicants that had applied for the Director's position as he had been told to expect 500 or more applicants. Chairman Thornton stated he didn't know why only 55 applicants had applied and noted that he had reviewed the job advertisement and it appeared to be very straight forward and persuasive in trying to stimulate a response. He also stated that he thought the Commission had advertised the position widely and wisely. He felt that he had not reviewed the files on any of the applicants because the Commission would receive the files today and start the review process. He added that applications are still welcome as well as nominations, if there were any by Commissioners. The Commission will continue to accept applications until it decides to close the applications. Chairman Thornton stated that the Commission has to decide how to review the applications that have already been submitted and any others that may be presented to the Commission as they are deliberating on the qualifications.

Chairman Thornton introduced Dr. Deborah Baldwin, Dean of Arts, Humanities and Social Sciences, University of Arkansas at Little Rock (UALR). He stated that Dr. Baldwin worked with the search committee, on which he and Commissioner Smith served in their efforts to find a dean for the law school. Dr. Baldwin stated that she has served on numerous search committees and learned some procedural things that she found to be helpful as she reviewed many applications of very qualified individuals. She offered some suggestions to the Commission in their search for a Director. She stated one of the things that the search team had done over time was deal with how to communicate. The search team decided not to communicate about the candidates by e-mail individually because the communication is not effective. The team came up with a matrix that would be used by all the individuals on search committees and focus the search committee's attention on the materials or the skills that have been designated.

Dr. Baldwin stated that Chairman Thornton, Ms. Gilson, and herself had talked this morning about how she has done searches in the past. She submitted a draft copy of a matrix that she has used. Chairman Thornton instructed BLR staff to make copies of the matrix for the Commission. He recommended that Dr. Baldwin proceed with the discussion of the Protocol for Evaluating Applications (Handout #2) followed by

discussion of the matrix (Handout #3). Commissioner Ben Pickard requested that, in the future, any handouts to be presented to the Commission be presented along with the agenda items to give the Commissioners the opportunity to review them. Chairman Thornton agreed with Commissioner Pickard's request and noted that the aforementioned information had been completed around noon today.

Dr. Baldwin suggested that the Commission might want to consider using the Protocol for Evaluating Applications (PEA) for collecting information regarding the applications. Dr. Baldwin discussed and listed areas of the PEA for consideration: 1) The Commissioners would receive the applications and independently review them confidently. 2) Commission would meet in executive session to discuss those candidates meriting further consideration. She noted that at the end of the process, the Commission would check yes if the candidate deserves further consideration or leave the section blank. 3) Obtain background checks on the individuals that the Commission feels deserve further consideration. 4) Review candidates meriting further consideration after the background check and determine which candidates to interview. Dr. Baldwin stated that moving toward the interview process, reference calls on the candidates would have to be made and a report given on the reference calls. She noted that UALR most often did conference calls with the candidates using a strict set of questions for all candidates. All reference calls have the same set of questions to compare the information from one candidate to another. Finally, the Commission could decide which candidates would be invited to an onsite interview. Dr. Baldwin presumed that the Commission has the added consideration of which things are done in executive session and those that are not.

Chairman Thornton stated that it is his hope that the Commission could remain in open session wherever possible and noted that the Commission was in open session. He added that the matrix would be handed out (Handout #3). Ms. Gilson stated that the Bureau could continue to refine the matrix document into a form that is usable. Chairman Thornton explained that on the work product itself, you check the items by each candidate's name, whether to give an up or down choice, the final choice, and if the candidate merits further consideration. He added that the aforementioned documents were available to the public under the Freedom of Information Act (FOI). The effort is being made by this means to keep everything open and transparent; however, it is only when the Commission gets to the point of checking references and determining the number of the final candidates for interviews that it may be necessary for the Commission to go into executive session. Chairman Thornton stated that he wanted the Commission to go into executive sessions as little as possible. Commissioner Jones requested that the matrix be e-mailed to her for review.

Dr. Baldwin discussed the matrix in detail (Attachment #3). She noted that the submitted matrix was not in usable form. She stated that she used the Director's job description information and divided it into discreet items and listed them along the top of the matrix. The idea is for the Commissioners to focus the discussion on the job description when they review the information. The ideal for most searches is to take the larger pool of applicants and hone it to a group of people that the Commission would begin making reference calls, background checks and setting up possible interviews. Dr. Baldwin stated that the search team found that using the matrix was a fairly quick way to get to the smaller number of applicants. The Commissioners could compare how many of them checked the same applicant for further consideration and suggested that the individual could be a fairly serious candidate. Chairman Thornton asked if this indicated that the individual would be kept in the pool of applicants and brought in for an interview. Dr. Baldwin stated that it did not indicate that; however, it merited a discussion among the Commissioners to decide on the next steps. She reminded the Commissioners that they were trying to get comparable information about the candidates and this was another reason for using a structured form. She pointed out that the Commissioners would look at all the criteria for all of the candidates and noted that every candidate may not have all the experience. She added that the Commissioners didn't have to fill in every box for each candidate; however, they would look for the requirements that were listed in the job description. The Commissioners could look at each applicant's qualifications and check yes/ no on the boxes and list how

much experience the applicants have in each area. Dr. Baldwin reminded the Commission that the documents were public documents. Chairman Thornton added that the documents were accessible to the press.

Dr. Baldwin stated that the Commissioners could communicate among each other in a more structured fashion if they knew the course of the discussion. Chairman Thornton stated that the list of applicants on the matrix is not complete and that the applicants are listed in order of when they filed their applications. He recommended that the Commission consider whether to use alphabetical ordering for ease of locating a particular applicant. Dr. Baldwin stated that not using alphabetical order could cause problems when additional individuals apply and the form would have to be redone many times. The Commission could take the application by date order and number the applications. She added that if this method is used, the numbers or the names should be repeated on each page of the matrix.

Chairman Thornton pointed out that Commission Pickard has a great deal of search experience. He also asked Commissioner Pickard if this was along the lines of what he has experienced and if he had any suggestions. Commissioner Pickard stated that when the Commission started the process, the decision was made that they would not have a search committee but that the Commission would act as the search committee as a whole. He also believed that the Commission had this in mind when the job description was developed and refined. He stated that there were not any weighting considerations on the matrix or in the job description and that the Commissioners had those things in mind. He added that the matrix would be a good assistance for the Commissioners individually. Chairman Thornton suggested that each Commissioner review the applicants and use the matrix as consideration as they personally make the review, then each Commissioner submit the names of no less than 6 applicants and no more than 10 applicants as their personal choices for further consideration. The Commissioners wouldn't discuss their choices with one another and they would have Ms. Laura Gilson combine each of the Commissioners applicants and pick up the process and go forward with it.

Commissioner Pickard noted that he hadn't seen the matrix before and didn't like using a matrix for every individual. He added that he thought that the matrix was a great help and support but was not his preference. Dr. Baldwin stated that everyone does their search differently. She noted that she has used the matrix to try and help a group focus on the job description and criteria rather than extraneous issues. She also stated that she was not sure if she and Commissioner Pickard disagreed upon the endpoint and how to get to the endpoint. She added that she is offering the matrix only to help individuals read applications and move to that point.

Chairman Thornton informed the Commission that the issue was open for the discussion. Dr. Baldwin pointed out that it sounded like Commissioner Pickard was suggesting that the Commissioners use the matrix if it helps them move in the direction of reading the applications. Commissioner Pickard stated that there is obviously a great deal of objectivity because of the job description; however, there would be some subjectivity because of the strengths individuals would see.

Chairman Thornton stated that the matrix was an initial way of seeing which candidates deserve further considerations for him to arrive at the list of 6 to 10 people which would appear on the matrix area marked "check here if candidate merits further consideration". He added that there were some reasons for everyone to follow a similar guideline to tie the applications to the advertised job description.

Commissioner Shipp asked Commissioner Pickard if he had some suggestions for an alternative method. Commissioner Pickard made a motion that each Commissioner review the applicants and return with 6 to 10 names and compare them to see how many Commissioners have the same names and have further discussions. Commissioner Joe White seconded the motion. Commissioner Thornton asked if the

mentioned motion would be considered as a tool for the Commissioners. Commissioner Pickard stated that it is a tool that each Commissioner could either choose to use or not use at their discretion. Commissioner Jones asked if the Commissioners would have access to other documents to use to narrow the applicants down besides the submitted matrix that she has not had the opportunity to view. Commissioner Thornton stated that the matrix was basically a breakdown of the job application advertisement into its component parts with an up or down point on each aspect.

Commissioner Jones concurred with Commissioner Pickard's method. She stated that the Commission should certainly use the matrix as a reference and maybe submit 10 names and narrow down the process. Commissioner Thornton stated that he was conscientious enough to not want to leave any questions as to how or why he recommended two, six or ten individuals for further consideration and noted that he would like to have some documentation and make it available to the press as to why his choices met the requirements of the job description and that it was not an arbitrary decision on his part. He stated that he will use the matrix, fill it out, and include it in his report of the applicants that he choose to recommend for further consideration. He added that the press would be very interested in the finding out how the other Commissioners' decisions were reached.

Commissioner Lamberth stated that she felt that the matrix was a great tool for the Commissioners. She said that the Commission's guideline was the job description. She concurred with Commissioner Pickard's comments that that they were very familiar with the job description. She added that the matrix was an excellent tool to use. However, the Commissioners should use it only at their discretion and that it not be mandatory that they use it. She also stated that there were some areas that she would probably weigh a little heavier. She noted that the comment was made that "weighted consideration would be given". Dr. Baldwin stated that she didn't collect the matrix on every job search. However, she suggested that every Commissioner use the matrix to make judgments and focus their attention.

Commissioner White thanked Dr. Baldwin for preparing the matrix. He stated that the Commission was acting as a Committee of a whole and the task was very important. He added that each Commissioner should decide on whether to use the matrix as their starting point. He noted that it was an open process and each Commissioner would be accountable for what they do. Chairman Thornton asked if Commissioner Pickard would entertain either an explanation of his motion or an amendment to his motion to state that the submitted matrix is a tool which may be used by those Commissioners desiring to do so in order to formulate their evaluation of the candidates. Commissioner Pickard stated that he didn't think Chairman Thornton's aforementioned statement would require a motion. He also rejected the request to amend his motion to add Chairman Thornton's statement as the intent. He further explained that all of the applicant's names that each Commissioner submits would be available to the press.

Chairman Thornton made a substitute motion to allow each Commissioner to evaluate the candidates in accordance with his/her own judgment but that the use of a matrix for analysis of the job description is a possible tool for any Commissioner to use if he/she desires to do so. Commissioner Lamberth stated that she thought that there was a motion on the table. Chairman Thornton stated that Commissioner Pickard's motion was on the ; however, he was making a substitute motion, an amendment to Commissioner Pickard's motion, as a motion. Commissioner Shipp asked if the Commissioners could hear the original motion to see how they differ. BLR staff repeated the motion that was made by Commissioner Pickard. Chairman Thornton asked Commissioner Pickard if he would accept an amendment to his motion to allow any Commissioners to use whatever tools they desire in making that evaluation. Commissioner Pickard said that he didn't believe that was the exact way that Chairman Thornton stated his substitute motion. He then asked that the Commission be allowed to vote on his motion first.

Chairman Thornton stated that he has made a motion to amend Commissioner Pickard's motion and noted that this was in order. Commissioner Mike Malone asked that the substitute motion be repeated for the

Commissioners. BLR staff repeated the substitute motion. Chairman Thornton stated that the substitute motion was aimed at allowing the Commissioners to make the final judgment call. He noted that he wanted the Commission to have legal authority to look at the matrix as he reviews the applications. Commissioner Malone asked if the Commission was precluded from using the matrix under Commissioner Pickard's motion. Chairman Thornton response was "yes" and further stated that Commissioner Pickard refused to allow an amendment that would allow Commissioners to look at the matrix as they review the applications. He added that maybe Commissioner Pickard didn't understand his request of the amendment. Commissioner Malone stated that he thought that Commissioner Pickard stated that the Commission could use individual tools. Commissioner Pickard reiterated that the Commission could use whatever individual tools that they chose to use. Commissioner Malone added that he got the sense from Commissioner Pickard's motion that the Commission wasn't necessarily restricted.

Commissioner Jones asked if there are other evaluation tools available to assist the Commission in selecting the Director besides the matrix. Commissioner Pickard stated that there are a number of tools available that they can use. He noted that human resource departments could be used and obviously individuals on search committees. He also stated that the Commissioner's could decide to come up with their own tools to use. Chairman Thornton stated that he had no problem with Commissioner Pickard's aforementioned statements as long as he is allowed to use his preferred method. Commissioner Pickard stated that he was not saying that Chairman Thornton couldn't use whatever method he wanted to use. Chairman Thornton replied that he had asked Commissioner Pickard if he would accept a substitute motion that said that the Commission could use whatever method he /she choose to use. He added that Commissioner Pickard rejected his substitute motion.

Commissioner Pickard asked Commissioner Thornton if he would agree that he mentioned the matrix specifically. Commissioner Thornton asked that BLR staff repeat the substitute motion that he made. BLR staff (Estella Smith), repeated Chairman Thornton's substitute motion twice. The substitute motion was to allow each Commissioner to evaluate the candidates using his/her own judgment but that the matrix could be used as a possible tool if he/she desires to do so. Chairman Thornton stated that he thought that this is exactly what he had said. Commissioner Pickard accepted the wording that BLR staff had repeated regarding Chairman Thornton's substitute motion. Commissioner White accepted the substitute motion (he had seconded Commissioner Pickard's motion earlier). The Commission unanimously adopted the motion as amended.

Chairman Thornton thanked Dr. Baldwin for presenting the matrix to the Commission. He also thanked the Commissioners for their patience and for standing their ground. Commissioner Pickard asked that the Commissioners come back with their six to ten names of applicants and decide whether to go into Executive Session to discuss the protocol. Chairman Thornton requested that the Commissioners keep the Protocol for Evaluating Applications in their briefcase as a possible way that they may proceed when they return to consider the protocol. Commissioner Hammons asked how the Commission would acquire the incoming applications. Chairman Thornton stated that the incoming applications should be transmitted to each Commissioner by secure means to keep it confidential. He noted that the applications could be sent by courier, if so desired. He added that the time frame could be every two to three days. Commissioner Malone requested that each Commissioner receive an e-mail informing them that the applications were on the way. He also asked, with regard to the protocol, if there was a date certain that the Commissioners should submit their list of up to 10 applicants. Chairman Thornton replied that he didn't have a date certain; however, he was hoping that the Commission could complete the task in a week or ten days. He asked that BLR staff keep a tally and an evaluation as to whether the Commission is approaching a time when they can have a meeting. He added that when he is advised that the Commission has enough work completed and with the approval of the Commission, he would call a meeting.

Other Business

Chairman Thornton instructed BLR staff to pass out the applications to each Commissioner to take home. He also asked that they treat them confidentially and be prepared to come back into session. He added that he expected more applications would be received today and over the next several days. He stated that at some point the Commission will want to establish a closing date for accepting applications. Commissioner Jones stated that she would get with Ms. Gilson to determine how she would receive the applications submitted thus far.

Committee meetings

Chairman Thornton stated that he could not in good faith confirm the date and location for the next Commission meeting.

The meeting adjourned at 3:45 p.m.